IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 1248

R. L. BRADFORD,
Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION AND BRIEF FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

R. L. BRADFORD, Petitioner,
In propria persona,
11 West 42nd Street,
New York 18, N. Y.

APPEAL PRINTING CO., INC., 120 CEDAR ST., NEW YORK, WO 2-2343

INDEX

TABLE OF CASES

STATUTES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No.

R. L. BRADFORD,
Petitioner,
v.
UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, R. L. BRADFORD, respectfully prays that a writ of certiorari issue to review the final decision of the United States Circuit Court of Appeals for the Second Circuit entered on March 18, 1947, affirming the judgment of the United States District Court of Connecticut.

Summary of the Matter Involved

On or about the 10th day of April, 1945, the assistant United States attorney for the District of Connecticut, filed an information in the United States District Court of said District, alleging in five counts that appellant obtained certain materials by extending preference ratings

in excess of the quantity necessary to satisfy the order for which said preference ratings were issued in purported violation of War Production Board Regulation No. 3.

On or about April 1, 1946, appellant pleaded *nolo contendere* and was thereafter, on April 22, 1946, sentenced by said court to pay a fine of $100.00 on each of said counts.

Opinion Below

The opinion of said Circuit Court has not yet been reported and will be found at pages 9 and 10 of the record.

Basis for Jurisdiction

It is competent for this court to require by certiorari that the cause be certified to it for review pursuant to the Act of February 13, 1925, c. 229, Sec. 1; 43 Stat. 938 amending and re-enacting Section 240 (a) of the Judicial Code, 28 U.S.C.A., Sec. 347; Rule 38 of the Rules of this Court, and Act of March 8, 1934.

Questions Presented

The questions presented are: (A) whether the acts charged in the information (Record, pp. 2a to 7a) constituted a violation of Priorities Regulation No. 3 (b) (2), as amended October 3, 1942; and (B) whether said Regulation as enforced and applied to the particular acts charged in said information infringe the due process of law clause of the fifth amendment to the Constitution of the United States and is void.

The reasons relied on for allowance of the writ are that the materials alleged to have been obtained by petitioner were not under restriction or control by any order or regulation of any federal agency and that any procedural regulation such as PR 3 relating exclusively to the use of preference ratings to obtain controlled materials could not have been violated; that said Regulation as enforced and applied is unconstitutional; and that therefore the penalty assessed in this instance deprived petitioner of his property without due process of law.

SUPPORTING BRIEF

ARGUMENT (A)

The information charged no violation of the procedural regulation PR 3 because said regulation applied only to controlled materials and said charged materials were not controlled.

Priorities Regulation No. 3, (b) (2) provided as follows:

> "(b) (2)—"Preference ratings may be applied by a person to whom they are assigned only to the specific quantities and kinds of materials authorized, or to the minimum required amounts or material when no specific quantities are authorized. Ratings which have been applied or extended by others to deliveries to be made by a person may, subject to the provisions of this Regulation, be extended by such person in order to obtain not more than the same amount and kind of material (except as specified in paragraph (c) (2) of this Regulation) which he has delivered or is required to deliver pursuant to such ratings."

Count 1 of said information alleges as follows:

> "The said defendants, Echlin Manufacturing Company and Robert L. Bradford, on or about October 19, 1942, at New Haven, Connecticut, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly perform acts prohibited by War Production Board Priorities Regulation No. 3, issued by the War Production Board, an agency of the United States of America, which Priorities Regulation was issued pursuant to Section 2(a) of the Act of June 28, 1940 (54 Stat. 676), the National Defense Act, as amended by the Act of May 31, 1941 (55 Stat. 236), and by Title 3 of the Second War Powers Act 1942, Act of March 27, 1942 (56 Stat. 177); that is to say, the said defendants, Echlin Manufacturing Company and Robert L. Bradford, at the place and on the date aforesaid, did unlawfully, wilfully, and knowingly violate War Production Board Priorities Regulation No. 3 in that they, the said defendants, being engaged in the manufacturing business and subject to said War Production Board Priorities Regulation No. 3, did unlawfully obtain one hundred and thirty (130) 0.25 ohm variable resistors by extending preference ratings, said quantity being in excess of the quantity necessary to satisfy the order for which said preference ratings were issued, the obtaining of said materials by said extension of preference ratings being in violation of Paragraph (b) (2) of Priorities Regulation No. 3 as amended October 3, 1942, and in violation of the statutes in such case made and provided and against the peace and dignity of the United States."

The other four counts are identically worded, except as to dates, quantity and kind of materials:

Count 2, October 19, 1942, 105 ammeters
" 3, December 17, 1943, 99# buna bands
" 4, January 14, 1944, 100# buna bands
" 5, July 16, 1943, 90 ammeters

The information charged no offense because the resistors, ammeters and buna bands alleged to have been obtained by the extension of preference ratings were on said dates in abundant supply, were not critical materials, were not essential to the war effort, were not rationed, regulated, controlled or restricted by any order, rule or regulation of any government agency, and could have been freely purchased in any quantity without limit from any source of supply without the extension or application of any preference ratings whatsoever.

Therefore, Priority Regulation 3, a mere procedural regulation, which only applied to materials when brought under specific regulation or control such as Shellac, M-106, F.R. vol. 8, No. 70, page 4646, April 8, 1943 (b), could not have been violated by the purchase of the uncontrolled materials charged.

A recent case, *United States* v. *Fink,* D. C. Nebraska, 69 F. Supp. 610, December 16, 1946, is exactly in point.

There the government sought to enjoin the defendant from proceeding with the construction of a house in violation of the Veteran's Housing Program Order No. 1 of the C.P.A. The court held that since the materials purchased "had not been declared critical or placed upon some priority or allocation basis" the government had failed to make a case. There, as here, "All of the materials were purchased in the open market, and from established business concerns, at times when these materials were available for purchase by the general

public. None of the materials, when purchased by the defendant, were critical materials or then held subject to priority controls."

Thus, while elemental and obvious justice was freely granted by the District Court, the same justice upon the same essential facts was arbitrarily denied this petitioner by the Circuit Court.

ARGUMENT (B)

Priorities Regulation No. 3, as here enforced and applied, is unconstitutional and void.

Priorities Regulation No. 3, and particularly section (b) (2) thereof, as enforced and applied to the inherently harmless and innocent acts charged in the five counts of the information, is an unreasonable, capricious and arbitrary exercise of police power without any real or substantial connection or relation between the assumed or purported purpose of said regulation and the facts of this case. Said regulation therefore violates the due process of law clause of the fifth amendment to the constitution of the United States, and is void, because it purports to punish appellant for the mere act of extending preference ratings to obtain resistors, etc., notwithstanding no law of the United States, nor any order, rule or regulation of any of its instrumentalities or agencies prohibited, restricted, limited, controlled or restrained in any manner whatsoever the purchase or sale of such material in *any* quantity.

Since these resistors, etc. could have been obtained without applying such rating because they were not scarce or critical materials, but were in abundant supply, the mere act of applying such rating was an idle, harmless, inherently innocent act, which served no purpose,

accomplished no result, worked no prejudice, and did not impede, obstruct or interfere with the war effort or divert this excess material from any needed or essential use or purpose.

As stated in 16 C. J. S. page 562, section 195:

> "In order that a statute may be sustained as an exercise of the police power, the courts must be able to see that the enactment has for its object the prevention of some offense or manifest evil or the preservation of the public health, safety, morals, or general welfare, that there is some clear, real and substantial connection between the assumed purpose of the enactment and the actual provisions thereof, and that the latter do in some plain, appreciable and appropriate manner tend toward the accomplishment of the object for which the power is exercised."

There can be no sense, excuse or reason whatever for penalizing the extension of ratings in this instance. It is wholly unreasonable and arbitrary. Rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state to effect.

> *Pierce* v. *Soc. of Sisters, etc.*, 268 U. S. 510;
> *Tyson & Bro.* v. *Banton*, 273 U. S. 418.

The appellant had an absolute right to contract for these resistors, etc., because they were not under priority control. Liberty to contract for a lawful purpose is a natural right. All persons are free to make whatever contracts they please so long as no fraud or deception is practiced and the contracts are legal in all respects.

> *Twin City Pipe Line Co.* v. *Harding Glass Co.*, 283 U. S. 353.

It would be ridiculous to assert that the extension of preference ratings to obtain abundant and therefore uncontrolled materials would undermine the health, safety, morals, convenience or general welfare of the public.

Admittedly, without the war emergency as an excuse, no government agency could, constitutionally, penalize the mere purchase of resistors, etc.—useful, innocuous and essential materials of commerce. Any materials therefore that were not controlled because of their abundance would retain their pre-war constitutional status.

A statute valid upon its face may yet be unconstitutional and invalid as construed, enforced and applied to the particular facts of the case.

Yick Wo v. *Hopkins*, 118 U. S. 356, 373;
St. Louis I. M. & S. R. Co. v. *Wynne*, 224 U. S. 354, 359;
Shaffer v. *Carter*, 252 U. S. 37, 55;
Nectow v. *Cambridge*, 277 U. S. 183, 185;
Gregg Dyeing Co. v. *Query*, 286 U. S. 472, 476.

Errors to be Urged

The Circuit Court erred:

In not reversing the judgment of the District Court because:

(A) The information charged no offense against the laws of the United States; and

(B) Priority Regulation No. 3 (b) (2) as enforced and applied to the particular facts of this case infringed the due process of law clause of the fifth amendment to the constitution of the United States.

The Circuit Court erroneously decided an important question of law which has not been but should, for the protection of the public against similar unfounded, arbitrary and illegal prosecutions, be settled by this court.

The Circuit Court so far departed from the accepted and usual course of judicial proceedings according to recognized concepts of due process of law as to call for this Court's power of supervision.

Reasons Relied on for Allowance of the Writ

All that petitioner did in this case was to purchase certain materials that were *not under priority control or regulation,* and which *did not require the use and extension of preference ratings.* Therefore, a mere procedural regulation relating *exclusively* to the application of preference ratings to obtain *controlled* materials was not and could not have been violated.

These materials were in the same category as thousands of other articles which were purchased freely and without penalty by the general public including the members of this Honorable Court in stores and other marts throughout the land.

The Circuit Court entirely ignored this plain and simple issue. Instead, it gratuitously devoted its opinion to the discussion of irrelevant matters not mentioned by this petitioner.

A candid examination of the record shows that there was no legal substance to this prosecution.

Why should opponents of arbitrary government recoil at the judicial iniquities of other lands and other ages, when a case, as flagrant in principle as any, is treated with connivance by the lower courts, and petitioner is forced to appeal to this Court for elemental justice?

Is this "a government of laws and not of men", or are these words mere pretense—a phantom bill of rights created and reiterated with no intention of enforcement whenever the occasion may arise?

CONCLUSION

Since the Circuit Court ignored the issues here presented and actually failed to decide them; and since such issues are important, involving as they do, the matter of arbitrary punishment without authority of law for the mere act of purchasing uncontrolled materials in a free and open market; and since the federal constitution should be enforced and respected; it is therefore respectfully submitted that a writ of certiorari should issue from this Court to review the decision of the Circuit Court of Appeals for the Second Circuit.

R. L. Bradford, Petitioner,
In propria persona,
11 West 42nd Street,
New York 18, N. Y.

INDEX

CITATIONS

741987—47

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1248

R. L. BRADFORD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 9–10) is not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered March 18, 1947 (R. 11). The petition for a writ of certiorari was filed April 15, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45 (a) of the Federal Rules of Criminal Procedure.

QUESTION PRESENTED

Whether a regulation of the War Production Board proscribing the obtaining of materials by extending preference ratings to quantities in excess of those required to satisfy the orders in respect of which the ratings were issued, could be violated with impunity by reason of the fact, asserted on appeal from a conviction on a plea of *nolo contendere,* but for which there is no support in the record, that the materials in question could have been obtained without the use of preference ratings.

STATUTE AND REGLUATION INVOLVED

The Act of June 28, 1940, c. 440, 54 Stat. 676, as amended by the Act of May 31, 1941, c. 157, 55 Stat. 236, and by Title III of the Second War Powers Act of March 27, 1942, c. 199, 56 Stat. 177, 50 U. S. C. App., Supp. V, 633 (50 U. S. C. App., Supp. V, 1152), provides in pertinent part:

> SEC. 2. (a) (1) Whenever deemed by the President of the United States to be in the best interests of the national defense during the national emergency declared by the President on September 8, 1939, to exist, the Secretary of the Navy is hereby authorized to negotiate contracts for the acquisition, construction, repair, or alteration of complete naval vessels or aircraft, or any portion thereof * * *. Deliveries of material under all orders placed pursuant to the authority of this paragraph

and all other naval contracts or orders and deliveries of material under all Army contracts or orders shall, in the discretion of the President, take priority over all deliveries for private account or for export * * *.

SEC. 2 (a) (2) Deliveries of material to which priority may be assigned pursuant to paragraph (1) shall include, in addition to deliveries of material under contracts or orders of the Army or Navy, deliveries of material under—

* * * * *

(B) Contracts or orders which the President shall deem necessary or appropriate to promote the defense of the United States;

(C) Subcontracts or suborders which the President shall deem necessary or appropriate to the fulfillment of any contract or order as specified in this subsection (a).

Deliveries under any contract or order specified in this subsection (a) may be assigned priority over deliveries under any other contract or order; and the President may require acceptance of and performance under such contracts or orders in preference to other contracts or orders for the purpose of assuring such priority. Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such

manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

* * * * *

SEC. 2 (a) (5). Any person who willfully performs any act prohibited, or willfully fails to perform any act required by, any provision of this subsection (a) or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

* * * * *

SEC. 2 (a) (7). No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this subsection (a) or any rule, regulation, or order issued thereunder, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid.

SEC. 2 (a) (8). The President may exercise any power, authority, or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe.

Priorities Regulation No. 3, as amended October 3, 1942 (7 F. R. 7887),[1] provided in pertinent part as follows:

> (a) *Definitions.*—For the purposes of this regulation:
>
> * * * * *
>
> (2) "Material" means any commodity, equipment, accessory, part, assembly or product of any kind.
>
> (3) "Assignment" of a preference rating means the granting to any person, by order or certificate issued by or under the authority of the Director General for Operations, of the right to use such rating.
>
> (4) "Application" of a preference rating means the use of the rating by the person to whom it is initially assigned by or under the authority of the Director General for Operations * * *.
>
> (5) "Extension" of a preference rating means the use of the rating by any person to whom it is applied or extended by another person.
>
> (b) *General provisions.*—(1) * * * any person may apply a preference rating assigned to him by any preference rating

[1] This was the last amendment prior to October 19, 1942, the date of the offenses alleged in counts 1 and 2 of the information involved herein. The regulation was thereafter amended numerous times, but without pertinent substantive changes. See 8 F. R. 8995, 8 F. R. 15684, and 8 F. R. 16970, for the wording of the regulation as of July 16, 1943, December 17, 1943, and January 14, 1944, the dates of the offenses alleged in counts 5, 3, and 4, respectively.

certificate or preference rating order issued to him in his name or as one of a class, and any person may extend any rating which has been applied or extended to deliveries to be made by him, subject to the provisions of this regulation.

(2) Preference ratings may be applied by the person to whom they are assigned only to the specific quantities and kinds of material authorized, or to the minimum required amounts [of] material when no specific quantities are authorized. Ratings which have been applied or extended by others to deliveries to be made by a person may, subject to the provisions of this Regulation, be extended by such person in order to obtain not more than the same amount and kind of material (except as specified in paragraph (c) (2) of this regulation) which he has delivered or is required to deliver pursuant to such ratings.

(3) No person shall duplicate, in whole or in part, purchase orders which he has placed with one or more suppliers for delivery of material to which he has applied or extended a rating, in such manner that the amount of the material ordered exceeds the amount to which he is authorized to apply or extend the rating, even though he intends to cancel or reduce his purchase orders to the authorized amount prior to completion of delivery.

(c) *Extension of ratings.*—The following provisions shall be applicable to all exten-

sions of preference ratings notwithstanding any inconsistent provisions of the preference rating certificate or preference rating order assigning the rating. No preference ratings may be extended to the delivery of any material *except:*

(1) Material which will itself be delivered by the person extending the rating on a delivery bearing the rating which is being extended, or which will be physically incorporated into material to be so delivered, including the portion of such material normally consumed or converted into scrap or byproducts in the course of processing, or

(2) Material which is required to replace in inventory material so delivered or incorporated. * * * or

(3) Repair, maintenance and operating supplies, * * *.

* * * * *

A person may not extend a rating to any materials in excess of the quantities specified in this paragraph (c) * * *.

STATEMENT

On April 10, 1945 (R. 1), an information in five counts (R. 2–7) was filed in the District Court for the District of Connecticut charging petitioner and the Echlin Manufacturing Company, of which he was secretary-treasurer, with having unlawfully obtained designated quantities of specified

types of electrical equipment by extending[2] preference ratings, the quantities thus obtained being in excess of those necessary to satisfy the orders for which the preference ratings were issued, in violation of the Act of June 28, 1940, as amended, and Priorities Regulation No. 3, as amended (*supra*). Petitioner was convicted on a plea of *nolo contendere* and fined $100 on each count (R. 1, 8).[3] On appeal to the Circuit Court of Appeals for the Second Circuit on the ground that the information failed to charge an offense or, in the alternative, that Priorities Regulation No. 3 was unconstitutional as applied (see R. 9, 10), the judgment of conviction was affirmed (R. 11).

ARGUMENT

Petitioner's contention seems to be that he could have obtained the electrical equipment described in the information without the necessity of extending preference ratings and that therefore he could not have violated any law in obtaining the equipment in that manner, or, at least, that any law forbidding the acquisition of the equipment in that manner must be deemed unconstitutional as applied to him (Pet. 5, 6–7). His assertion that he could have obtained the equipment in question

---

[2] See p. 5, *supra*, for the definition of "extension" of a preference rating.

[3] The record does not disclose what further proceedings were had in respect of the corporate defendant.

without the use of preference ratings is, however, not only gratuitous, but, we submit, irrelevant.

By his plea of *nolo contendere,* petitioner of course admitted the fact, as alleged, that he did obtain the equipment involved by extending preference ratings to quantities in excess of those required to satisfy the orders in respect of which the ratings were initially issued. This manner of acquisition was specifically proscribed by paragraphs (b) (2) and (c) of Priorities Regulation No. 3 (*supra,* pp. 6–7). The reason for the illegality of this manner of acquisition is obvious. By Section 2 (a) (2) of the Act of June 28, 1940, as amended (*supra,* pp. 3–4), Congress empowered the President, through such agency as he might direct, to assign priorities to deliveries of material under contracts or orders deemed by him necessary or appropriate to promote the national defense. The President was further empowered to "require acceptance of and performance under such contracts or orders in preference to other contracts or orders for the purpose of assuring such priority." The War Production Board, to which the President delegated the authority thus conferred, directed that "Defense Orders and all other orders bearing preference ratings must be accepted and filled in preference to any other contracts or orders" except those "bearing higher or equal preference ratings." Priorities Regulation No. 1 (6 F. R. 4489), as amended (8 F. R. 6417), § 944.2. Further, by Section 2 (a) (7) of

the Act of June 28, 1940, as amended (*supra*, p. 4), Congress provided that no person should be held liable for damages or penalties for any default under any contract or order resulting directly or indirectly from compliance with Section 2 (a) or any regulation issued thereunder. It is thus apparent that Congress not only exempted all suppliers of goods from liability for breach of contract resulting from their compliance with the priorities system, but also made it unlawful for suppliers to refuse to honor orders bearing preference ratings assigned under that system. From this arose the obvious necessity of proscribing the obtaining of materials by the unauthorized use of preference ratings. The power of Congress to enable the President, through the agency designated to administer the priorities system, to proscribe such unauthorized use of preference ratings is, we submit, as manifest as its power to establish the system itself.

Assuming, for argument only, the truth of petitioner's assertion, for which there is no support in the record, that on the dates alleged in the information the types of electrical equipment described therein were in such abundant supply that they could have been freely purchased by any willing buyer without the necessity of using preference ratings, his proper course, obviously, was to purchase them in that manner, and not, as he did, to acquire them by illegally extending his ratings.

CONCLUSION

The petition for a writ of certiorari presents no question meriting further review by this Court. We therefore respectfully submit that it should be denied.

GEORGE T. WASHINGTON,
Acting Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
ROBERT S. ERDAHL,
PHILIP R. MONAHAN,
Attorneys.

MAY 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947